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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

TIMOTHY LEE TAYLOR,)	Civil No. 07-6297-CL
)	
Plaintiff,)	ORDER
)	
v.)	
)	
TERRANCE P. GOUGH,)	
)	
Defendant.)	

PANNER, Judge.

Plaintiff Timothy Lee Taylor, who the Complaint states is also known as Timothy Ray Sadler, brings this action against his former defense attorney, Terrance Gough. On October 30, 2007, Magistrate Judge Clarke recommended that the matter be dismissed. A copy of the Findings and Recommendation was mailed to Plaintiff's address of record, but returned as undeliverable.

The matter is now before me for *de novo* review pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

From the Complaint, it is difficult to understand what Plaintiff contends Mr. Gough did wrong, or how Plaintiff was harmed as a result. According to the Complaint, the prison sentence Plaintiff served was a mandatory minimum Measure 11 sentence, following his plea of guilty to first degree kidnapping and Assault IV. The matters Plaintiff complains of do not appear

to have had any affect upon the duration of his sentence. Even assuming the facts alleged by Plaintiff are true, as a matter of law they are insufficient to state a claim for legal malpractice.

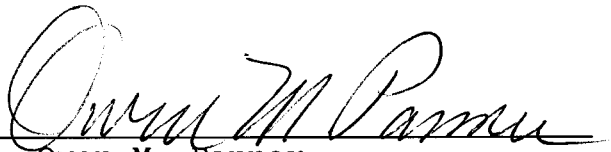
The facts alleged in the Complaint also fail to state a claim under 42 U.S.C. § 1983 for violating Plaintiff's constitutional rights. One essential requirement of a section 1983 claim is that the defendant has acted under "color of state law." In representing Plaintiff as criminal defense attorney, Mr. Gough is not deemed to have acted under "color of state law," notwithstanding that Gough's fee was paid by the government. Polk County v. Dodson, 454 U.S. 312, 319-22 (1981). Accordingly, Plaintiff is unable to state a claim against Gough under 42 U.S.C. § 1983.

Conclusion

Magistrate Judge Clarke's Findings and Recommendation (# 5) are adopted. This action is dismissed. The dismissal is with prejudice as to the claims against defendant Gough, but without prejudice regarding any (hypothetical) habeas claim.

IT IS SO ORDERED.

DATED this 2 day of January, 2008.


Owen M. Panner
United States District Judge